THE RECORD
OF THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

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Association Activities

ON MAY 14 at five o'clock the Art Committee, G. Franklin Ludington, chairman, will open its show of paintings, water colors, etchings, woodcuts, drawings and sculpture by members. The indications are that it will be an exhibit of talent of a very high order by professional men who enjoy distinguished reputations in more fields than one. John I. H. Baur, the Curator of the Brooklyn Museum, is acting as consultant to the Committee. Mr. Baur will make the final selections of the work that is to be displayed as well as direct the manner in which it will be mounted. Although it is contemplated that the show will be open for two weeks, and during some of that time to the public, the May fourteenth opening will be limited to members and their guests. Cocktails will be served, there will be music, and it is thought that the occasion will be one of the most pleasant events of the Association year. Announcements giving full details will be mailed to members.

THE ANNUAL MEETING will be held on May 14. In addition to the election of officers there will be a report from the Labor Law Committee, which will call for action by the Association. As the President indicates in his letter the meeting will start promptly at eight o'clock and adjourn at ten o'clock.

An important innovation in connection with this Annual

Meeting will be a buffet dinner to be served at six-thirty preceding the meeting. The charge for the dinner and cocktails will be $3.00. As stated above, the art exhibition, sponsored by the Committee on Art, will open at five o'clock the same afternoon. Thus members who wish to attend both the art show and the Annual Meeting can conveniently arrange to have their dinner at the House of the Association. Reservations will *not* be necessary for those who plan to attend only the art show, but reservations are required from those attending the buffet dinner.

THE UNIFORM REVISED SALES ACT has been carefully considered by the Committee on Uniform State Laws, James H. Halpin, chairman. A number of suggestions for improvement have been developed which will be submitted to the National Conference of Commissioners on Uniform State Laws. The consideration of the Act has been under the direction of a subcommittee consisting of James M. Snee and Hiram Thomas. The Committee also has under consideration a uniform domicile act and the possibility of a uniform act to deal with weights and measures.

THE ENTERTAINMENT COMMITTEE is making plans for an informal evening's entertainment to be held for members at the House of the Association during the first week in June. As is the Committee's usual practice, details must wait on an announcement framed in the Committee's own proper style. There are rumors, however, of checkered table cloths and quartets and beer and other divertissements.

THE COPYRIGHT COMMITTEE, of which Robert P. Myers is chairman, has called to the attention of the Appropriations Committee of the House of Representatives the lack of sufficient funds for the Copyright Office. This condition seriously jeopardizes business running not merely into the millions, but actually into the billions of dollars, annually. The Committee states in its letter:

The Copyright Office, by reason of inadequate staff, at present is not and for some time has not been properly functioning, as was contemplated by Congress in its creation, and under the several subsequent copyright acts. Its operation is growing progressively worse, to the serious detriment of all American business based upon or connected with copyright. Some of the functions of the Copyright Office (all of which were intended to be and should be absolutely up to date) are from eight months to a year in arrears. Even when copyright recordings finally reach the catalogue, the data catalogued is inadequate, insufficient and unsatisfactory. The making of photostatic copies and the certification of documents and records by the Copyright Office, essential for use on the trial of copyright litigation, are often so long delayed that litigants are compelled to prepare for trial without such documents, to the irreparable prejudice to the owners of copyright or rights under copyright. Urgent steps are mandatory to correct this state of affairs which threatens to become rapidly and radically worse.

Without prompt functioning of the Copyright Office and without an adequate copyright catalogue promptly issued, there seems little occasion for a Copyright Office, for there are at present no available complete and dependable records for business or sources of information for the public. Understaffed as it is, the Copyright Office cannot and does not nearly keep up to date its records and catalogues, nor is it able, with any degree of promptness, to answer telegrams or letters seeking data as to its records. Such delays frequently result in the abandonment of business transactions, with the accompanying substantial financial loss.

These facts have been called to the attention of the Register of Copyright, who states that the office personnel has been so materially reduced because of inadequate appropriations that any hope for any improvement in the situation is well nigh impossible.

AT THE STATED MEETING on April 9 the Association adopted a resolution offered by the Committee on International Law urging the government of the United States to accept the compulsory

jurisdiction of the International Court of Justice in legal disputes. The action of the Association was of particular importance because it was one of the first tests of public sentiment on this issue which is now before the Congress. Similar declarations had been made by most of the members of the League of Nations with reference to the old World Court. The action requested would be somewhat analogous to such a statute as the Tucker Act.

A second resolution adopted at the April Stated Meeting commits the Association to seek Federal legislation that would require organizations engaged in the dissemination of propaganda to disclose the originators, members and financial records. The resolution was offered by the Committee on the Bill of Rights, George Roberts, chairman, and presented for consideration by Edwin DeT. Bechtel, a member of the Committee. There was spirited opposition to the proposal on the grounds that the proposed legislation would seriously impair the guarantees of freedom of speech and of the press. The proponents argued that while the preservation of liberty demands full freedom of expression the preservation of such basic rights negates the necessity of stealth and anonymity.

Two proposals of the Committee on Law Reform were approved. One of these recommended legislation to prohibit public servants from advising the public against employing attorneys. The draft of the proposed bill is to be found in THE RECORD for April. The second proposal of the Law Reform Committee urged the adoption of legislation that would facilitate the use of corporate notes secured by mortgages as a means of eliminating unnecessary documentary stamp taxes.

The annual report of the Committee on the Judiciary was presented to the Stated Meeting by Arthur A. Ballantine in the absence of the chairman, John G. Jackson. The report with the Committee's endorsement of candidates for judicial office is to be found in this issue of THE RECORD.

Resolutions were offered memorializing the Honorable George

Z. Medalie, the Honorable James A. Foley, and Mr. George L. Shearer.

THE COMMITTEE ON FOREIGN LAWS, James G. Mitchell, chairman, is considering how to render the work of the Committee more effective in cooperation with American business and financial interests and the official representatives of the United States and foreign countries.

THE COMMITTEE ON PROFESSIONAL ETHICS, John M. Harlan, chairman, releases in this number of THE RECORD an important opinion on the formation of partnerships between lawyers admitted to practice in different jurisdictions. The opinion considers the approved style of the firm, the proper letterhead and whether the income from offices located in two cities may be pooled and divided among the partners irrespective of the source of the individual fees. The attention of the membership is directed to the very real service the Committee on Professional Ethics offers in giving such declaratory opinions. It is hoped that the Committee will be able to publish at some future time a collection of its opinions.

THE COMMITTEE ON POST-ADMISSION LEGAL EDUCATION, of which Keith Lorenz is chairman, has inaugurated the practice of holding a buffet dinner at a modest price prior to the lectures which it sponsors. The dinners are limited to members of the Association who may bring one guest. If the dinners are well attended, the Committee intends to make the plan a regular feature of its program.

"MAY IT PLEASE THE COURT," the Entertainment Committee's venture into the world of the theatre apparently pleased everyone. Over a thousand members and guests attended Association

Night, and there have been many enthusiastic comments on Newman Levy's book and music, Sam Ballin's direction, the settings designed by William C. Breed, Jr. and all the other factors that made the production such a great success. The cast, of course, are the heroes of the play. Judge James G. Wallace, Arthur Markewich, Lloyd Paul Stryker, K. Bertram Friedman, L. Reyner Samet, and all the others did a professional job in a profession which has always had close ties with the law.

THE COMMITTEE ON LAW REFORM, Barent Ten Eyck, chairman, will welcome suggestions from members of the Association of projects for change or reform in substantive law or procedure. The Law Reform Committee is charged with the duty of initiating such changes and reforms and, if the Committee is to keep abreast of the times, it is obvious that the entire membership should be alert to call to the Committee's attention specific instances where improvements in the law can be made. Before the Committee now are suggestions dealing with impleader, perpetuities, multiple dwelling house leases and costs in derivative stockholders' actions. The Committee hopes to start its work early enough in the Association year so that it will have ready for introduction into the next legislature when it first meets carefully prepared bills, and it is also hoped that it will be possible to give more support to Association sponsored legislation than has been the practice in the past.

The Calendar of the Association for May

(as of April 16, 1946)

May 1 Meeting of Section on Wills, Trusts and Estates
Dinner Meeting of Committee on the Municipal Court of the City of New York

May 2 Dinner Meeting of the Committee on Courts of Superior Jurisdiction

May 6 Meeting of Section on Labor Law

May 7 Meeting of Section on Corporations

May 8 Dinner Meeting of Executive Committee

May 14 Lawyers As Artists—Exhibition of members' works of art 5 P.M.
Annual Meeting and Buffet Dinner 6:30 p.m.

May 15 Meeting of Section on Trials

May 17 Meeting of Section on Wills, Trusts and Estates

May 21 Meeting of Section on Taxation

May 22 Meeting of Committee on Admissions
Meeting of Committee on Professional Ethics

May 23 Meeting of Section on Federal Practice

May 27 Meeting of Library Committee

Remarks of Chief Justice Harlan F. Stone

ON THE OCCASION OF THE CELEBRATION OF THE SEVENTY-FIFTH ANNIVERSARY OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, MARCH 16, 1946

We are met to celebrate the anniversary of the organization of this Association, an event of great significance in the history of our profession and of the struggle for good government in this city and state. It is also for me a personal anniversary, for it is now twenty-one years since I took my departure from this city, believing and intending it to be but for a brief sojourn in the official life of Washington. That sojourn has now stretched out into many years. They have been absorbingly busy and interesting years, but I will not say that there have not been times when I have felt nostalgic yearnings for those exciting days when I was either teaching law to young men, or practicing my profession here in New York. And so I am happy to be back for a day among my brethren of the Bar, to renew old associations, and to greet old friends.

The formal corporate life of this Association dates from its organization approximately seventy-five years ago, on February 17, 1870. But, like many men and some institutions, its prenatal existence has been a real source of the vitality which, in this instance, has made the Association, from the beginning, a powerful and effective force for professional and civic good. In December, 1869, before there was an organized Bar in this city, and I think before there were such organizations elsewhere in this country of any special significance, some two hundred and thirty-one members of the Bar of this city and vicinity signed a call for a meeting to effect an organization of New York City lawyers. Their aim was not the usual one, to provide material comforts and facilities for the Bar and a place for the social gatherings of its members. It was to meet a crisis in government which had so compromised the integrity of lawyers and judges in this community as to threaten with destruction the honor and usefulness of the Bench and Bar, and our judicial and legal institutions.

As a result of political changes which had attended the rapid

growth and the commercial expansion of the city after the Civil War, a corrupt and predatory political organization had the city government in its clutches. As has too often happened in this country, the cohesive force of public plunder had brought about an alliance of dishonest government with dishonest business. In carrying out their common aims, they had made the weaker members of the Bench pliant tools of corruption, the corrosive influence of which had permeated the administration of justice and the machinery of law administration and law-making. Justice, or rather the denial of it, was openly and brazenly sold from the Bench. Members of the Bar, not wanting in learning and ability, had been found ready and willing to facilitate the barter. There remained honest judges and honest lawyers, many of them as the event proved, but the threat to the administration of justice and to good government was a grave one, and one which at the moment seemed difficult, if not impossible to avert.

The sordid story has often been told and its details need not now be repeated. What is of concern to us this afternoon is not the precise depths of degradation into which a great city and a great profession fell, but that we do not forget that the fall was occasioned, if not encouraged, by the indifference and neglect of lawyers, whose special obligation it is to see to it that the laws are administered with a firm and even hand, and that the sources of law and justice be kept pure and undefiled.

With that unhappy recollection in mind, and drawing from it the appropriate lesson, we may take the more pride in the courageous vigor and intelligence, and the high sense of professional obligation with which those leaders of the Bar of seventy-five years ago, attacked the forces of evil. Protected only by their integrity and unassailable reputations, and armed only with the skill and resources which are the fortunate possessions of those who are disciplined in the law, they planned and executed a campaign which purged Bench and Bar of their unworthy members, and ultimately returned the administration of justice to a position in the community which commanded public confidence and respect.

They did not, as is so often the case with Bar organizations, con-

tent themselves with the passage of pious resolutions to be spread upon the minutes and then forgotten. They moved forward to courageous and determined action. They appointed competent committees to study the problem and to make recommendations for action. In carrying on their investigations they braved the risk of brutal assault, from which, indeed, one of the group, Mr. Dorman B. Eaton, nearly lost his life. Armed with the knowledge, which is power, gained from study and investigation, and with the authority and support of their associates, they carried the battle to the Legislature, preferring there charges against recreant judges who in consequence were ultimately driven from the Bench. The revelations of the committee resulted in indictments of corrupt public officials and political leaders who fled or were brought to justice. By the efforts of the founders of this Association the corrupt power, which had overshadowed the administration of the law and darkened the future of the profession and of the city and state, was broken.

I dwell upon this first chapter in the history of this Association because it seems to me important that on this, its seventy-fifth anniversary, our membership, and especially its younger generation, should be again reminded of the extent to which this Association symbolizes the professional ideals and aspirations of those men who were its founders. It is not too much to say that their minds and characters have given direction and content to the activities of this Association throughout its existence. Its constant endeavor to improve the standards of the Bar, its unflagging efforts to secure the selection of judges of character and competence, and to insure their reelection after a term of faithful service, as well as its diligence in removing from the Bench and Bar their unworthy members, are at one with the aims of those stouthearted leaders of the Bar who set the Association on its feet and pointed the way in which it should go.

But the Association has not restricted its interest in the administration of the law and the welfare of the Bar to the suppression

of its unworthy members. As occasion has arisen it has directed its powerful influence to the promotion, in more constructive ways, of good government and to the perpetuation of those principles of government upon which this nation was founded. A notable example, of which I might give others if time would permit—and one as fresh in my recollections as if it had occurred only yesterday—was the great debate, staged in this room on January 13, 1920, upon the proposed expulsion from the State Assembly of the five Socialist members, because of their political views. I see that Mr. Waldman, who was one of them, is here today. I think perhaps he will tell you of that meeting and what came of it, and so I shall not anticipate him.

It is but fair to say that neither I nor many other members of the Association felt any particular partiality for the Socialist program, but there were some of us who saw a foul blow to representative government in the attempt to expel from the Legislature, because of their political opinions, duly elected representatives of the people. It is for that reason that I am proud to recall that I joined with other members in signing a call for a meeting of the Association at which the proposal could be debated and appropriate action taken. Mr. Charles Evans Hughes, with whom I was later to have an agreeable association for many years, and who, as the then recent Republican candidate for President, was the titular leader of his party, had already taken a public stand against the proposal. We asked him to lead the debate, and pitted against him was Mr. William D. Guthrie—both prominent members of this Association. Rarely have I heard any public discussion conducted with more power and skill and resourcefulness, and never one more worthy of our profession and of this Association. It lasted until the small hours of the morning and ended with the passage of a resolution—I am sorry to say by a rather narrow margin—condemning the action of the Assembly in proposing the expulsion of the Socialists, and authorizing the appointment of a committee of this Association to make appropriate representa-

tions to the Legislature. My recollection is that the committee's powerful presentation of the matter to the Legislature failed of its immediate purpose. But that its objective was ultimately reached is proved by the fact that this crude and misguided attempt to break down representative government in this state has never been repeated.

There have been many changes in the law since this Association was organized, and perhaps the most notable of them have occurred within the twenty-five years since our last anniversary meeting. Of those which are perhaps destined to have the most far-reaching consequences, one is the rise of the administrative agencies, with the accompanying increase of their functions and powers. Another has been the expansion of the federal commerce power through the exercise by Congress of its power to regulate not only interstate commerce itself, but those local matters which are regulable by Congress only because they affect the commerce.

In reflecting upon the kind of service Bar associations can best render to the profession and the community, we ought not to forget that notwithstanding the rather obvious need and utility of the administrative agency in many fields of the law, and despite the conspicuous example afforded by the Interstate Commerce Commission, the legal profession has very generally devoted its energies to an unsuccessful resistance to the adoption of this useful legal device. In this it has sometimes seemed to me that the Bar did much to dissipate its influence and to make a wasteful use of its specialized competence, which could well have been more usefully employed in guiding the organization of the new agencies on a basis which I believe could, in some instances at least, have promoted their more efficient and just operation. The creation of the administrative agencies, like the conditions which evoked them, has given rise to new problems, whose solution must ultimately be found by those skilled in the law. Lawyers ought not to permit themselves, by their indifference to those problems, to add a second to their first mistake. Few suppose that these agencies are functioning perfectly, or that they cannot be improved. Oppor-

tunity invites solution by those skilled in the law who stand ready, as the Bar has so often stood, to make disinterested contribution of its skill and learning to the advancement of useful projects of law improvement.

The extension of the commerce power through the exercise by Congress of its power to regulate those matters which are not themselves interstate commerce, but which affect it, has sometimes been characterized as the product of a judicial revolution. If clear thinking is the first step toward effective action, the efforts of some members of the legal profession to stay this expansion of power would perhaps have been more effective if the change had been recognized from the start for what it was—a legislative and not a judicial revolution.

Some eighteen years ago, in an address before the American Bar Association, I took occasion to point out that the power of Congress to regulate interstate commerce was a ready constitutional means of expanding federal power. This was not a novel idea. Chief Justice Marshall, in *Gibbons* v. *Ogden,* 9 Wheat. 1, 196, with characteristic clarity and vigor, had stated that regulation of interstate commerce might be made to operate as the means of regulating matters which were not themselves interstate commerce, but which were affected by it. The *Minnesota Rate Cases,* 230 U. S. 352; the *Shreveport* case, 234 U. S. 342; *Chicago Board of Trade* v. *Olson,* 262 U. S. 1, to mention no others, had already sustained regulation by Congress, through the commerce power, of matters which were not themselves interstate commerce, because they affected the commerce. It is evident that when Congress, many years afterward, began to exercise that power on a large scale, in order to accomplish desired social and economic reforms within the states, it was a legislative and not a judicial revolution which was being staged, and for those who wished to play the role of counter-revolutionists, it was a legislative and not a judicial remedy which was needed.

Another notable change in the law which affects lawyers throughout the country was the adoption in 1938 of really sim-

plified Rules of Civil Procedure for the Federal Courts. The Rules were promulgated by the Supreme Court in the exercise of its rule-making power, conferred by Congress. Their preparation was the work of a committee of lawyers, headed by Mr. William D. Mitchell, formerly President of this Association. Under his wise and skillful leadership the committee has made a great advance in creating a system of civil procedure which is concise, simple, adaptable, and efficient. The rules have proved to be highly successful in operation—so much so in fact that I understand some states have adopted them for use in their own courts. There are thus some lawyers who are now in the enviable position of being able to practice in a sort of lawyers' paradise, where all courts function under a single unified system of procedure.

Since anniversaries are occasions on which age is supposed to enjoy special privileges, we of the elder generation may perhaps be permitted to indulge in a reminiscent mood. It is now more than fifty years since I came to this city to begin my law studies, and nearly fifty since my admission to the Bar. Those were the days of rugged individualism at the Bar, when the lawyer of distinction was the gladiator and not the commander or officer of a regiment or, shall I say, an army. The leaders had won distinction in the trial of causes and the argument of appeals, and by their participation in those discussions of public affairs which are peculiarly the province of the lawyer. Their public influence was personal, not so largely institutional as is that of the members of the great law firms of a later day.

Now, as we look back, we know that that was an era which was already on the wane. Soon we were to see the rise of the great law firms, with their multitudinous staffs, which were to become more or less permanent institutions, absorbing, and to a considerable extent, obscuring from the public view the individual characteristics and talents of their members, and denying in large measure to the students of the law and young lawyers, those personal contacts with their seniors which, in the past, had supplied such a valuable part of the training for the Bar. As all this was a change,

so much in tune with the times as to seem inevitable, I shall not stop to debate its desirability. One must admit that the great law offices, highly organized and skillfully managed, have devised new and efficient methods of solving the legal problems which attend the conduct of great affairs. But it must be confessed also that the change has been accompanied by a regrettable decline in the public influence of the Bar, for the very simple reason, I believe, that the minds of men are more influenced by powerful personalities than by any institution, however efficient, whose tendency is almost invariably to overshadow the personalities of those who conduct its affairs.

With the recent expansion of the controls over business enterprise through administrative agencies, the lawyer's function in business organization and financing has become so much a matter of statistical reports and the filling out of blanks for the controlling agencies, that one wonders whether the day may not again come when the lawyer will be more inclined to seek his career in the forum, leaving it, as he largely must, to the administrative agencies to find their own legal solutions for business problems on the basis of data which the lawyer can only gather and submit.

As I look back on my early days at the Bar, I recall some of the conspicuous figures of the Bench and the Bar of that time. Judge Cullen of the Court of Appeals, soon to become its Chief Judge, was a man of robust personality, who seemed to exert that kind of personal influence over judges and lawyers which was reminiscent of that wielded in an earlier day by Chief Justice Shaw of the Massachusetts Supreme Court. Judge Van Brunt, who then presided over the General Term of the Supreme Court, was soon to be called to preside over the newly established Appellate Division of the First Department. That court became an extremely busy one, and in fact transacted more judicial business, I believe, than any other court in the world. I have always felt that the prompt and efficient manner in which it ground out this enormous grist for the judicial mill was due to the driving power and dominating personality of Judge Van Brunt. We marvelled that this

court was able to do this with creditable promptness and skill, without ever appearing to listen to the arguments of counsel, however eminent. We who were tyros at the Bar spared no pains in the preparation of our briefs for that court, but we prepared and delivered our arguments as though they were to be addressed to a vacant Bench. In these later days, when I find myself becoming inattentive to argument, I have but to recall those early experiences with the Appellate Division, and I am at once all attention. Judge Van Brunt was succeeded by Judge Ingraham, long a conspicuous judicial figure in the state, and he by John Proctor Clarke, who presided there with grace and dignity for many years, and who often charmed Bar audiences with his eloquence.

In those, for me, early days, there were at least a dozen and perhaps more leaders of the Bar who had won high distinction as lawyers and exerted wide influence with their fellows and the public. It seemed to me then, as it does now, that outstanding among these Olympians were Mr. James C. Carter and Mr. Joseph Choate. Together they seemed to represent all those qualities which have made the law a great profession, and which most entitles it to public influence and respect. Mr. Carter's knowledge of the law was philosophical and profound. His arguments were the very personification of power. Mr. Choate was a wise counsellor, and extraordinarily skilled in the forensic art. His discourse, always witty and singularly graceful, was not for that wanting in power. He won great victories by the natural and unstudied charm of his personality, and the kind of persuasive eloquence which wins the verdicts of juries and the decisions of courts with a deceptive appearance of ease. Both men, throughout their long professional careers, were frequently retained in great causes in which they were often antagonists. Both freely and invariably gave their support to worthy causes for the advancement of the public good.

When I came to the Bar, Mr. Carter was nearing the end of his active days. He was then President of this Association. It was

characteristic of him that he became the Chairman of the newly organized committee for the examination of the character of candidates for the Bar, and devoted himself assiduously to its labors. I am happy to say that he examined my character and found it passable.

Mr. Choate was soon to leave for some years of distinguished service as our Ambassador to Great Britain. Upon his return I well remember seeing him walking up Nassau Street with a group of other lawyers, on his way to his first day in court after his resumption of practice. From then until his death some twelve years later, in 1917, I often had occasion to see and talk with him, the last time being either one or two days before his death when, as our first citizen, he participated in the welcome of the group of eminent Frenchmen, headed by General Joffre, who had come here to consult us about our participation in the First World War. I remember how he impressed me then, as he often had before, with the extraordinary beauty of his old age. In this I have known but one other who was comparable, Mr. Justice Holmes.

These, and many others garnered through the years, are precious memories for me, as I know they are for my brothers in the law. The lawyer, more than others, cherishes his recollections of the heroes of the law and their achievements. For him they are the symbols of all that is finest and most elevating in the calling which, followed as a trade, becomes ignoble and base, but pursued as a profession calls forth the noblest attributes of men.

This Association, for us who are its members, serves to represent and keep fresh in our consciousness all those traditions of the Bar, and those recollections of its achievements which, year by year, fortify its strength and fructify its spirit. The Association has thus become for us the emblem of the worthy accomplishments of the past, and the assurance of achievement in the future.

Lawyers are often criticized, and not without warrant, for resisting change, however desirable or inevitable, rather than using their talents in guiding it to useful ends. And Bar associations are sometimes charged with being too self-centered, more concerned

with the distribution of their offices among their members, than with the vital interests of the law and the profession. I am happy to say that in no instance that I recall could these criticisms be fairly leveled at this Association. Recognizing that life itself is change, and that the law is rooted in life, the Association has been wisely progressive in meeting the manifold changes which, through the years, have affected the law, the courts, and the Bar. With it all, the Association has had no selfish aim. It has sought to promote no individual or Association interest which was not calculated to advance the best interests of the profession and the public. Prophetic of its course are those striking words of Samuel J. Tilden, spoken at that memorable first meeting of the New York Bar in December, 1869, when he said:

"I do not desire to see the Bar combined except for two objects, the one is to elevate itself, to elevate its own standards, the other is for the common and public good. For itself nothing; for that noble and generous and elevated profession of which it is the representative, everything.

"The Bar, if it is to continue to exist . . . must be bold in defense, and, if need be, bold in aggression. If it will do its duty to itself, if it will do its duty to the profession which it follows, and to which it is devoted, the Bar can do everything else. It can have reformed constitutions, it can have a reformed judiciary, it can have the administration of justice made pure and honorable. . . . . "

It would be altogether a fitting thing, Mr. President, if these prescient words, so expressive of the purposes for which this Association was founded, were to be inscribed on the walls of this building, to remind us what its past has been and what its future must be made to be.

The President's Letter

To the Members of the Association:

When the Chief Justice of the United States discusses Association affairs in THE RECORD there is no need for any words from me. There will be only a few of them.

I want to record that the attendance at the April Stated Meeting was 200 and to express my appreciation. I hope that most of the members who were there will come on May 14. I am sorry that bad forecasting on my part, among other things, made the meeting much too long. I think that this can be avoided in the future. Even before the meeting the Executive Committee had approved my suggestion that 8 o'clock instead of 8:30 be the hour for convening Stated Meetings. I promise 10 o'clock as the deadline for adjournment, barring accidents. I also promise a better staggering of committee reports and, in spite of shorter meetings, abundant time for proper consideration of important questions.

The response to the suggestion sent to all members of more than fifteen years standing at the Bar that they become Sustaining Members paying $125. dues rather than the $75. dues of Active Members has not been too encouraging. As of today only 68 members had acted on the suggestion. The number of Sustaining Members is now 579. The goal of the Sub-Committee of the Executive Committee is one thousand.

I doubt whether any member of any committee has given more hours to his Association work than each member of the cast—to say nothing of author Newman Levy and director Samuel Ballin—gave in the production of "May It Please the Court" at the Astor on Association Night. I do not know the language of the critics, so I can only repeat what seems to have been the general opinion: that it was a magnificent performance and a memorable evening. I am proud to say that the cast let the office boy come to their triumphal dinner.

HARRISON TWEED

April 18, 1946

Resolutions Adopted at the Stated Meeting of April 9, 1946

RESOLUTION OFFERED BY THE COMMITTEE ON INTERNATIONAL LAW

WHEREAS, the International Court of Justice has now been established by the United Nations pursuant to its Statute which forms an integral part of the Charter of the United Nations; and

WHEREAS, pursuant to Article 93 of the Charter, all members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice; and

WHEREAS, Article 36(2) of the Statute provides that "The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation."

NOW, THEREFORE, be it

RESOLVED, by the Association of the Bar of the City of New York that it urges upon the Government of the United States that it make a declaration accepting as compulsory in relation to any other state accepting the same obligation, the jurisdiction of the court in the categories of legal disputes set forth in Article 36(2) of the Statute

Provided, that such declaration should not apply to

(a) differences, the solution of which shall be entrusted to other tribunals by agreements already in existence or which may be concluded in the future (Article 95 of the Charter); or

(b) disputes with regard to matters which are essentially

within the domestic jurisdiction of the United States (Article 2(7) of the Charter); and

Further provided, that such declaration should remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate the declaration.

RESOLUTION OFFERED BY THE COMMITTEE ON THE BILL OF RIGHTS

RESOLVED that the Association of the Bar of the City of New York is in favor of legislation by Congress requiring adequate disclosure of the originators, officers, financial records, and other pertinent facts of organizations engaged in the public dissemination by the press, radio, or printed materials of ideas, which are intended to influence public opinion,

PROVIDED that such legislation expressly reaffirms the Constitutional guarantees of freedom of speech and of the press and expressly preserves the present civil remedies and criminal laws regarding libel and slander; and

FURTHER RESOLVED that the President is authorized to appoint a special committee of not more than five members of the Association to draft bill or bills to the above effect and endeavor to secure their introduction in the Congress and their passage.

RESOLUTIONS OFFERED BY THE COMMITTEE ON LAW REFORM

RESOLVED: that the recommendation of the Committee on Law Reform, to the Association, that it approve enactment of a law to constitute a new Section 72-a, Public Officers Law, aimed at eradication of the practice of State employees' discouraging employment of attorneys, in the form of the proposed bill incorporated in that Committee's report, as published at pages 114–115 of the April, 1946, issue of THE RECORD, be, and it hereby is, approved.

RESOLVED: that the recommendation of the Committee on Law Reform to the Association that it approve enactment of a

bill to provide for the use of corporate notes secured by mortgages as well as bonds secured by mortgages in order to eliminate unnecessary documentary stamp taxes, and that it approve enactment of a bill amending Section 231 of the Lien Law to eliminate unnecessary filing or refiling of corporate mortgages as chattel mortgages, in the form of the proposed bills incorporated in that Committee's report, as published at pages 128–129 of the April, 1946 issue of THE RECORD, be, and it hereby is, approved.

Committee Reports

COMMITTEE ON THE JUDICIARY

ANNUAL REPORT

1945–1946

The Committee on the Judiciary, as required by the by-laws, presents herewith its report for the year ending May, 1946.

In accordance with its established practice of endorsing for reelection sitting Judges who had competently and satisfactorily performed the duties of their office and upheld the independence, dignity and prestige of the Bench, your Committee at the April 10, 1945 meeting of the Association offered a resolution endorsing Mr. Justice Edward S. Dore for renomination and reelection. Justice Dore was nominated by all political parties and elected.

At the October 16, 1945 meeting of the Association your Committee reported on four nominees for the two remaining vacancies in the Supreme Court of New York County. It recommended as qualified for that office Messrs. Henry Clay Greenberg, Paxton Blair and Leo J. Rosett. It reported to the Association that the remaining nominee, Samuel Dickstein, was in the opinion of this Committee not qualified to discharge the duties of a Justice of the Supreme Court. The Association approved the recommendations of the Committee. Mr. Henry Clay Greenberg and Mr. Dickstein were elected and Mr. Blair and Mr. Rosett were defeated.

The deeply lamented death of the Honorable Irving Lehman, Chief Judge of the Court of Appeals, left a vacancy in that office. Thereafter the Governor appointed to fill that vacancy the Honorable John T. Loughran, who in accepting the appointment resigned his office as an Associate Judge of the Court. To fill this

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Editor's Note: THE RECORD will not make a practice of printing annual reports of committees. These will be found in the Year Book. The report of the Judiciary Committee, however, contains the committee's endorsements for judicial office and it is thought the membership would want this information as early as possible.

vacancy the Governor appointed the late George Z. Medalie of New York City.

Judge Loughran was born in Kingston, New York, February 23, 1889, and educated at Kingston Academy and Fordham University. He was admitted to the Bar in 1911, practiced his profession at Kingston until 1922 and thereafter in New York City, during which period he was a member of the Law Faculty of Fordham University. In November 1930 he was elected a Justice of the Supreme Court. In 1934 he was appointed by Governor Lehman to the Court of Appeals to fill the vacancy caused by the retirement of Judge Henry T. Kellogg. He was elected an Associate Judge of the Court for a full term in November 1934.

Throughout his judicial career Judge Loughran has demonstrated beyond any question marked ability, learning, courage and courtesy and that he is qualified in every respect for the great judicial office he presently holds.

The appointed term of Chief Judge Loughran will expire December 31, 1946, and at the election of November 1946 a nominee for this position will be elected. It is of the utmost importance, in the opinion of this Committee, that the administration of justice in this State should continue to have the service of this outstanding Judge. To this end we urge that all of the political parties join in nominating him to succeed to his present office. Your Committee, accordingly, offers the following resolution:

> RESOLVED, that the Association of the Bar of the City of New York approves and endorses the nomination by all political parties of the Honorable John T. Loughran for Chief Judge of the Court of Appeals and urges the electors of the State to cast an emphatic vote of approval for the valuable public service being rendered by this distinguished and scholarly Judge.

The Committee records its regret that the untimely death of Judge George Z. Medalie makes it impossible to offer a like resolution with respect to him. No one has been appointed, as yet, to succeed Judge Medalie and, accordingly, the Committee has no

report to make at this time with respect to that vacancy, which likewise must be filled at the November 1946 election.

The deeply lamented death of the Honorable James A. Foley created a vacancy in the important office of Surrogate of New York County. There was much public speculation as to his successor and the Committee was concerned as to the qualifications of certain candidates who were being urged for appointment. Accordingly, a meeting of the Committee was held on February 19, 1946, at which the following resolution was unanimously adopted by all of the ten members of the Committee present at that meeting and sent to the Governor:

> WHEREAS the Honorable William T. Collins has twice been elected to the office of Justice of the Supreme Court of the State of New York, the second time on nomination of all major political parties, and in his service in that Court demonstrated high qualities and fitness for judicial office, and
>
> WHEREAS following his appointment by the Appellate Division he has served as Acting Surrogate of New York County to the satisfaction of the public and the Bar and evidenced exceptional competency to perform the duties of that office,
>
> Now Therefore be it RESOLVED by the Judiciary Committee of the Association of the Bar of the City of New York that it recommend to the Governor of the State that Justice Collins be appointed to fill the vacancy in the office of Surrogate of the County of New York resulting from the death of the Honorable James A. Foley.

The Governor acknowledged receipt of the resolution with thanks and expressed his appreciation of having the benefit of the views of the Committee. Mr. Justice Collins was appointed Surrogate to succeed Surrogate Foley and has since fulfilled the duties of that office to the satisfaction of the Bar. The Committee expresses its conviction that this important judicial office should not be the subject of political controversy and that Surrogate Collins should be renominated for election to that office by all political parties this coming November. It is our opinion that unless that

is done the Committee, either of its own initiative or in association with others, should undertake to support an independent movement designed to insure, if possible, the election of Surrogate Collins.

A vacancy in the office of Justice of the Supreme Court resulting from the resignation of Justice William T. Collins upon his appointment to the office of Surrogate was filled by the appointment of Mr. Edgar J. Nathan, Jr. In 1939 Mr. Nathan was nominated for the office of Justice of the Supreme Court and his qualifications for that office were approved in this Committee's report dated October 17, 1939, and he was endorsed by the Association. The Committee regards the appointment as excellent.

At the November 1946 elections there will be four vacancies to fill in the office of Justice of the Supreme Court, New York County: Justice Townley retires, as he will have attained the age limit. The terms of office of Justices Nathan, Hofstadter and Steuer expire.

With respect to the latter two Judges, in line with its established policy, your Committee offers the following resolution:

> RESOLVED that in the opinion of the Association of the Bar of the City of New York, Justices Hofstadter and Steuer, having performed acceptably their judicial duties for a full elected term, should receive in accordance with the tradition maintained by this Association, the nomination of all political parties, and this Association accordingly so recommends and urges their reelection to the Supreme Court.

In the City Court there will be three vacancies. Mr. Justice Joseph W. Keller will retire because of the Constitutional age limit. Mr. Chief Justice Byrnes of Manhattan and Mr. Justice Evans of the Bronx are eligible for reelection. Each has served a full term and accordingly the Committee offers the following resolution:

> RESOLVED that in the opinion of the Association of the Bar of the City of New York, Justices Byrnes and Evans having performed acceptably their judicial duties for a

full elected term, should receive in accordance with the tradition maintained by this Association, the nomination of all political parties, and this Association accordingly so recommends and urges their reelection to the City Court.

We again express the hope that leaders of the political parties will confer with this Committee well in advance of nominating conventions and thus afford it an opportunity to investigate the qualifications and fitness of those who will be presented to the nominating conventions as candidates for judicial offices and thereafter to express its views.

Respectfully submitted,

COMMITTEE ON THE JUDICIARY
OF
THE ASSOCIATION OF THE BAR OF THE
CITY OF NEW YORK

Members of the Committee

JOHN G. JACKSON, *Chairman*
ARTHUR A. BALLANTINE
MASON H. BIGELOW
CHARLES BURLINGHAM
LOUIS CONNICK
WALTER G. DUNNINGTON
STANLEY H. FULD
THEODORE KIENDL
ALLEN T. KLOTS
LOUIS M. LOEB
HORACE S. MANGES
TIMOTHY N. PFEIFFER
EUSTACE SELIGMAN
HIRAM C. TODD
BOYKIN C. WRIGHT

COMMITTEE ON PROFESSIONAL ETHICS

OPINION ON FORMATION OF PARTNERSHIPS BETWEEN LAWYERS ADMITTED TO PRACTICE IN DIFFERENT STATES

The Committee has received the three inquiries set forth below, which are answered together because they present various aspects of the same problem.

(1) A, B, C, D and E, members of the bar of the District of Columbia, are partners practicing in Washington under the firm name of A, B, C & D. Three of the partners, C, D and E, are also members of the New York bar, but the other two are not.

The firm desires to maintain another office in New York City, to which D and E plan to give their full time, and which will be staffed entirely by lawyers admitted to practice in New York. C plans to divide his time between the New York and Washington offices. A and B will devote their full time to the Washington office and will not engage in any activities for which admission to the New York bar is a prerequisite. The major portion of the firm's practice, in both offices, would consist of matters before agencies of the federal government, which would be handled jointly by the personnel of both offices.

The Committee's opinion is requested on the following questions:

(a) May the Washington firm name of A, B, C & D be used in New York if the letterhead and office door clearly indicate that only members of the New York bar are practicing in New York?

(b) If the answer to the preceding question is yes, would a letterhead be acceptable showing the firm name A, B, C & D with the New York address in the center, the names C, D and E listed on the left, and the address of the firm's Washington office on the right?

(c) May the income from both the Washington and New York offices be pooled and divided among the partners irrespective of the source of individual fees?

(2) A and B are patent lawyers, A being admitted to practice in New York and B in several other states but not in New York. They propose to organize a firm under the name of A & B and to open an office in New York City, their practice to be confined to Patent Office matters and federal court litigation in regard to patents, trade marks, copyrights and similar matters.

The Committee's opinion is requested on the following matters:

(a) May the proposed firm be organized, and the proposed firm name be used on the letterhead, office door, and in the telephone directory?

(b) May litigation of the character described be conducted in the name of A as attorney of record, with B as counsel?

(c) May the fees earned by the firm or the individual partners be pooled and the resulting net income divided between the partners in accordance with their agreement?

(3) A corporation for which a New York City law firm is legal counsel, after moving a portion of its general office from New York to Miami, has requested that the New York firm continue to be solely responsible for all of the corporation's legal affairs, and that a lawyer shall be continuously available at the corporation's Miami office. Accordingly the New York firm proposes to employ a member of the Florida bar who will be assigned to the corporation's Miami office and will devote substantially all of his time to this client's affairs. He may also handle other Florida matters for the New York firm, which will assume full responsibility for his conduct, activities and opinions.

The Committee's opinion is requested on the following questions:

(a) Would the proposed arrangement as outlined above involve any improper elements?

(b) May the New York firm add to its letterhead the words, "Florida Office," or "Florida Representative," or "Florida Associate," followed by the Florida associate's name and address?

(c) May the Florida associate use, in Florida, a letterhead in

any of the forms described in (b); or if not, may he add to his own individual letterhead the words "New York Associates" or similar words, followed by the New York firm's name and address?

(d) May the Florida associate, with the New York firm's approval, sign the firm name to opinions and letters prepared by himself?

OPINION

The foregoing questions are in the main governed by the following provisions of Canon 33:

> "Partnerships among lawyers for the practice of their profession are very common and are not to be condemned. In the formation of partnerships and the use of partnership names care should be taken not to violate any law, custom, or rule of court locally applicable. Where partnerships are formed between lawyers who are not all admitted to practice in the courts of the state, care should be taken to avoid any misleading name or representation which would create a false impression as to the professional position or privileges of the member not locally admitted. In the formation of partnerships for the practice of law, no person should be admitted or held out as a practitioner or member who is not a member of the legal profession duly authorized to practice, and amenable to professional discipline. In the selection and use of a firm name, no false, misleading, assumed or trade name should be used."

The last sentence of the foregoing quotation took its present form as the result of an amendment to the Canon adopted September 30, 1937. It replaced two sentences reading as follows:

> "In the selection and use of a firm name, one not admitted to practice in the local courts should not be named, lest such use of his name should mislead as to his professional position or privileges. And no false or assumed or trade name should be used to disguise the practitioner or his partnership."

In the opinion of the Committee the Canon recognizes that partnerships may be properly formed between lawyers admitted to practice in different states, if there is no use of a misleading

name or other representation which would create a false impression as to the professional position or privileges of a member not locally admitted. Before the amendment of 1937, the inclusion in the firm name of one not admitted to practice in the local courts was expressly forbidden as misleading. The removal of this specific prohibition was not, in our opinion, intended to sanction what had been previously forbidden. The general injunction to avoid misleading names or representations was continued and the issue now has become a question whether under the circumstances of the given case, and in the light of local usage, a firm name or other representation would *in fact* create a false impression as to the status of lawyers not locally admitted.

With this background, we turn to the questions submitted:

(1)-(a) and (b) The Washington law firm desires to use in connection with its New York office a firm name in which the first two members named are not locally admitted and intend to devote their full time to the Washington office. Apparently realizing that in these circumstances the use of the name without more would be misleading, the inquiring attorneys add that the letterhead and office door will clearly indicate that only members of the New York bar are practicing in this state. On a sample letterhead it is indicated that this would be accomplished by listing below and to the left of the firm name the names of the three partners admitted in New York. Presumably, it would be the intention to list the same three names on the office door, beneath the firm name.

This firm, in spite of the fact that the major portion of its business is before federal agencies, must be regarded as engaged in general practice, clearly distinguishable from the practice of patent, trademark and copyright law exclusively, as in the case discussed later under (2). In the opinion of the Committee, the firm name of a law firm engaged in general practice in the City of New York is generally regarded as including the names of members of the New York bar only, living or deceased. To use the proposed firm name, in which two of the members are not ad-

mitted to practice in New York, would in our opinion inevitably create a false impression as to their status. We do not think the proposed form of letterhead or office door notation, or any similar forms, would sufficiently correct the false implication of such a firm name. The name would be in general use under many circumstances where the limited list of New York partners would not be observable. It is sufficient to mention the telephone directory, the building directories, and ordinary oral references. Accordingly, it is the opinion of the Committee that the use of the proposed firm name in New York would violate Canon 33, and that the proposed form of letterhead, displaying the firm name in connection with the firm's New York office address, would be unacceptable.

(c) In the opinion of the Committee, the provisions of Canon 33 which recognize that partnerships may be properly formed between lawyers admitted to practice in different states, necessarily imply that there may be a firm income, in which the partners are entitled to share, irrespective of the source of individual fees. It follows that, in the case before us, the income from the Washington and New York offices may be pooled and divided among the partners. This does not mean that the non-members of the New York bar may receive a part of a fee, as such, for legal services in New York. All fees when received become assets of the partnership. Their individual identity is lost. They become subject to the total expenses of the partnership, and the net income which is divided among the partners is a residuum not identifiable with any specific source of origin.

(2)-(a) In the opinion of the Committee, there is a substantial difference in this regard between the position of a law firm engaged in general practice and that of a law firm which confines its practice to patent office matters and federal court litigation in regard to patents, trade marks, copyrights and related matters. The patent bar is, in substance, a federal bar. Practitioners in this field, although of course admitted to practice at the bar of one

or more states, have little or no legal business with a definitely local situs. They commonly appear in the federal courts wherever patent litigation affecting their clients happens to start. Among firms engaged in this type of practice, the use of a firm name which includes one or more members not locally admitted is countenanced by local usage and, in the opinion of the Committee, is not misleading if the letterhead and the office door separately designate the partners who are not members of the New York bar by indicating the state in which such members are admitted to practice. We also think that, under the circumstances stated, such firm name may appear in the telephone and building directories.

(b) In the opinion of the Committee, the firm could, without impropriety, conduct litigation in the local federal court in the specified field, A appearing as attorney of record and B as counsel, provided that the court has given permission for B to be so designated.

(c) For the reasons already stated, the Committee is of the opinion that the fees earned by the firm or the individual partners may be pooled and the resulting net income divided between the partners in accordance with their agreement.

(3)-(a) The proposed arrangement under which the New York City law firm would employ a Florida attorney to handle business for the firm in that state would not, in the opinion of the Committee, involve improper elements.

(b) In the opinion of the Committee, the New York firm may add to its letterhead any of the words suggested, followed by the Florida associate's name and address.

The Committee feels that it is not within its province, as a committee of the Association of the Bar of the City of New York, to express an opinion regarding the propriety of the procedure, in Florida, which is the subject of parts (c) and (d) of the third inquiry.

In answering the foregoing questions, the Committee has as-

sumed the legality of the practices involved, and expresses no opinion as to the ethics of any of such practices which are in fact contrary to the law of any applicable jurisdiction.

The foregoing opinion is that of the Committee alone, and has not been passed upon by the Association.

Respectfully submitted,

COMMITTEE ON PROFESSIONAL ETHICS
OF
THE ASSOCIATION OF THE BAR OF THE
CITY OF NEW YORK

Members of the Committee

JOHN M. HARLAN, *Chairman*
HOWARD C. ANDERSON, JR.
CHAUNCEY BELKNAP
JULIAN N. GOLDMAN
LOUIS C. HAGGERTY
BERNARD HERSHKOPF
HORACE G. HITCHCOCK
SAMUEL H. KAUFMAN
CARROLL B. LOW
MARK W. MACLAY
EDWARD RAGER
LAWRASON RIGGS
RUSH TAGGART
JAMES N. VAUGHAN
ALEXANDER WILEY

COMMITTEE ON LABOR AND SOCIAL SECURITY LEGISLATION

REPORT ON UNIONIZATION OF SUPERVISORY EMPLOYEES AND PENALTIES FOR VIOLENCE DURING STRIKES

In the report which this Committee made on February 11, 1946 on the Case Labor Disputes Bill, the statement was made that, although the Committee disapproved the bill as passed by the House of Representatives, the Committee would make a further study of the principles involved in the bill. As a result of such further study the Committee submits this report.

I

UNIONIZATION OF SUPERVISORY EMPLOYEES

The broad questions posed under this heading, as the Committee saw them, were whether by law supervisors are or should

be denied the right to join unions or to organize as employees for the purposes of collective bargaining, and, if not, whether any legal restrictions should be imposed on the type of bargaining agent that might represent them.

The status of supervisors (with the possible exception of those at the topmost levels) as employees in the common acceptance of that term, seemed plain to the Committee, and as such, the Committee felt they should be protected against discharge or discrimination if they joined a union, and should be accorded the right to bargain collectively which is accorded to other employees. Analysis of the pertinent material made it seem equally plain that the National Labor Relations Act accords them this status by law. The trend toward organization by supervisors for the purpose of collective bargaining demonstrates as a practical matter the desire of these workers in many instances to be so regarded and treated, especially in cases where relationships between the supervisors and their employer are on a group, rather than on an individual basis.

The Committee concluded that as a matter of policy this status, with accompanying free access to the machinery set up under the National Labor Relations Act, should be preserved. No one has suggested that employers should be prohibited from recognizing supervisory unions by agreement. In the absence of such a prohibition, exclusion from the National Labor Relations Act would not stem the tide of organization by supervisors for collective bargaining purposes. It would serve simply to relegate them to the picket lines as their only forum.

In the main both the National Labor Relations Board and the New York State Labor Relations Board have set up separate bargaining units for supervisors where their supervisory functions differentiate their interests from the interests of the employees whom they supervise. This seems to the Committee to be wise and sound policy. It avoids confusion at the bargaining table which might otherwise result from possible conflicts of interests between the supervisors and the workers supervised in the negotiation of collective bargaining agreements.

A minority of the Committee favors the enactment of legislation which would require that supervisory employees be, in all cases, precluded from inclusion in the same bargaining unit as those supervised, and suggests, as a rule of thumb definition of supervisory employees, the definitions of executive and administrative employees promulgated under the Fair Labor Standards Act. The majority of the Committee, however, believes that this definition is inapt, and that the difficulties which would be encountered in imposing any rigid definition upon a situation inherently incapable of precise classification would outweigh the advantages to be derived therefrom.

Some disagreement among the Committee arose in connection with the question whether any restriction should be imposed by law on the type of organization which might be designated as collective bargaining agent for supervisors. The majority of the Committee concluded that the mere fact of affiliation between a local union representing supervisors and an international union which also represented supervised workers should not disqualify the local union from recognition. A contrary conclusion would compel the adoption of a rule either requiring supervisors' unions to be completely independent organizations or of a rule that if the supervised workers belonged to a local union affiliated with one international union the supervisors might only join a union affiliated with another international union. Neither of these choices seemed acceptable. No valid reason appeared why, if supervisors so chose, they should not be permitted the designation of a local union having the support of an international union. Even more plainly did it seem that if the supervised workers in a given company designated a local affiliated with one international there would be no rational basis for legislative requirement that the supervisors must confine their choice to a union affiliated with another international.

This left open for discussion the question whether supervisors should be permitted to join local unions which number in their membership supervised rank and file workers. On this point

the Committee divided. A minority of the Committee felt that notwithstanding the possibility of conflict of interests in some cases, this question should be decided on a case by case basis by administrative rulings through the appropriate Labor Boards. They felt that any attempt to write legislative restriction on this subject would prevent the Labor Boards from dealing in a practical way with specific situations as they arose. Moreover, it would tend to establish a rigid, inflexible rule which would impair legitimate practices and relationships of long standing as well as frustrate right of self-organization of supervisory employees.

The majority of the Committee, however, felt that no local union could properly and fairly represent a blended membership of supervisors and supervised workers. It felt that the duties of supervisors as management representatives under established grievance procedures, as well as in the fixing of rates and in connection with promotions, discharges, etc., involved such a conflict of interest between them and the workers under their jurisdiction that no single collective bargaining agent could represent them both and do full justice to the diverse interests of its two types of members. It concluded that as a matter of law no single bargaining agent should be permitted to attempt to do so. It felt that the presence of these two groups in the same local union was undesirable both from the point of view of organized labor, as well as that of management. In making its recommendation on this subject as outlined below, the Committee recognizes that there are local unions which presently represent and have traditionally represented both supervisors and rank and file workers under their supervision. It was their feeling that, to the extent that it was feasible, existing relationships between such local unions and employers should not be disturbed. However, it was not felt feasible to delineate in this report the boundary between such cases and those to be affected by the legislative proposal. This, it was felt, could only adequately be done after legislative hearings designed to bring out all relevant facts.

Accordingly, the Committee recommends and finds:

(a) That as a matter of policy, as well as of law, supervisory employees should be regarded as employees within the meaning of the National Labor Relations Act.

(b) That such employees (with possible room for difference of opinion at the highest levels of supervision) are entitled to full access to the machinery of the National Labor Relations Act and in the interests of industrial peace should be accorded such access.

(c) That the rules evolved by the National and New York State Labor Boards of setting up separate bargaining units for supervisory employees where their supervisory functions differentiate their interests from the interests of the employees whom they supervise, is sound, and should be continued.

(d) That it would be neither wise nor feasible to adopt by legislation a rule prohibiting supervisors from joining a local union (whose membership is composed exclusively of supervisors) which is affiliated with an international union having other locals representing the supervised rank and file workers.

(e) That no local union should be permitted by law to serve or be recognized as a collective bargaining agent for combined membership of supervisors and rank and file workers supervised, and that the necessary legal enactment to impose this restriction be sponsored; such legislation however (to the extent determined as feasible after legislative hearings) not to disturb existing relationships between employees and local unions presently composed of such a combined membership.

II

PENALTIES FOR VIOLENCE DURING STRIKES

The Committee considered whether amendments under the branches of (a) Criminal Law, (b) the laws relative to injunctions in labor disputes, and (c) the National Labor Relations Act, should be sponsored for the purpose of more effectively dealing with violence during strikes. It reached the conclusion that no change under any of these three branches was desirable at this time.

(a) The subject of violence in its various degrees as a criminal offense is adequately dealt with under existing Criminal Law. Even the sponsors of the original Case Bill did not suggest further criminal penalties.

(b) The question arising under this heading is whether in cases involving violence the statutory safeguards respecting the issuance of injunctions should be dispensed with. Both under the Norris-LaGuardia Act and Section 876 (a) of the Civil Practice Act of the State of New York, provision is already made for the granting of injunctions to restrain violence. The issuance of injunctions to restrain violence is, however, surrounded by statutory safeguards requiring, among other things, as a prerequisite a hearing in open court and findings of certain specified facts. The Committee unanimously feels that as a matter of policy they should not be dispensed with. It believes these safeguards to be proper, desirable, and in consonance with sound public policy. The withdrawal of these safeguards would inevitably revive or at least invite the evils of the indiscriminate issuance of labor injunctions on *ex parte* applications—evils which this legislation was intended to cure and which it has in the main cured.

(c) National Labor Relations Act—The proposals affecting this Act contained in the original Case Bill were (1) that any individual who prevented or attempted to prevent by force, violence, or threats, another individual from quitting or continuing in the employ of or accepting or refusing employment by any employer, or from entering or leaving any place of employment, should cease, apparently forever, to be entitled to the status of an employee under the Act or the status of a representative for the purpose of the Act; (2) that an employee shown by a preponderance of the testimony taken in proceedings before the National Labor Relations Board to have wilfully engaged in violence, intimidation, unlawful destruction or seizure of property in connection with a labor dispute should not be entitled to reinstatement by or back pay from his employer under the Act.

The Committee felt that the first of these proposals was much

too drastic and that the priniciple embodied in the second one was already being given effect through decisions of the courts and of the National Labor Relations Board.

Under the first proposal the most trivial form of violence, force or threats would result in the maximum penalty contained in the proposal. No attempt was made in the proposal to establish a fair relationship between offense and punishment.

Insofar as the second proposal is concerned, the Committee noted that under the *Fansteel* and *Southern Steamship* cases, the National Labor Relations Board had denied relief in the way of reinstatement or back pay where employees have been guilty of engaging in a sitdown strike or mutiny on a ship tied to a dock. The Board follows the same rule where a strike is called in clear violation of the terms of a collective bargaining agreement under the doctrine of the *Sands Manufacturing* case. In other cases (*Mid-West Petroleum Co.*, 54 N.L.R.B. 916, *Mt. Clemmons Pottery Company*, 46 N.L.R.B. 714, *Berkshire Knitting Mills*, 46 N.L.R.B. 955) the Board has upheld an employer's refusal to reinstate employees who engaged in various forms of violence and has gone as far as to deny relief where the object of a strike was to compel an employer to commit an illegal act, even though the striker's action fell short of violence (*American News Company*, 55 N.L.R.B. 1302).

In expressing agreement with the foregoing conclusions the majority of the Committee wish to record their feeling that while they agree that the law presently provides adequate remedies for violence occuring during strikes, they deprecate the violence which occurred during some recent strikes, and particularly that which occurred in the course of resisting injunctions issued by courts. They feel, however, that what is called for in this situation is not more laws but more self-discipline by unions and a more determined attitude by public officials charged with the enforcement of the law to see to it that violence and disobedience of court decrees are promptly dealt with under existing law. In making this statement they do not mean or intend to condone the action of recalcitrant employers who fail to enter into and conduct collective bargaining in good faith.

III

BOYCOTTS

The Committee has not concluded its study of what, if any, legislation is desirable with respect to boycotts. It is continuing its work in this field, and will render a further report at some future time.

The Chairman wishes to express his thanks to the members of a sub-committee, Messrs. David L. Benetar, Chairman, John L. Freeman, Hyman N. Glickstein and John J. McGowan, upon whose recommendations to the full Committee this report is largely based.

Mr. William C. Scott, a member of the Committee, has expressed his general dissent from the foregoing report, without specifying the grounds therefor.

Respectfully submitted,

COMMITTEE ON LABOR AND
SOCIAL SECURITY LEGISLATION
OF
THE ASSOCIATION OF THE BAR OF THE
CITY OF NEW YORK

April 18, 1946.

Members of the Committee

MORRELL S. LOCKHART, *Chairman*
DAVID L. BENETAR
HYMAN N. GLICKSTEIN
HERMAN A. GRAY
NATHAN GREENE
HERBERT W. HALDENSTEIN
ARTHUR GARFIELD HAYS
JAMES ELLIOTT HUGHES
I. MONTEFIORE LEVY
JAMES J. McGOWAN
EDWARD C. MAGUIRE
ARTHUR MARKEWICH
FREDERICK H. ROHLFS
EMIL SCHLESINGER
WILLIAM E. STEVENSON

Auxiliary Members

HERBERT J. FABRICANT
JOHN L. FREEMAN
ROBERT A. LEVITT
WILLIAM C. SCOTT

The Library

SIDNEY B. HILL, *Librarian*

THE LAWS OF THE AMERICAN INDIAN

One of the specialized collections in the Library of the Association is that dealing with the laws of the American Indian. Our legal relations with the Indians have resulted in over four thousand treaties and statutes and thousands of judicial decisions and administrative rulings. Legislation, judicial decisions and administrative rulings concerning them will continue to expand, as the Indian is one of the most rapidly increasing racial groups of our country.

Their tribal constitutions and laws augmented by the treaties, statutes and administrative rulings issued since the discovery of America up to the present day, give the complete historical background and evolution of Indian Law. It is the purpose of this article to dwell upon the laws as promulgated by the various Indian tribes when they maintained an autonomous status.

Among the Indian tribes of the United States which have published constitutions and laws are the Cherokees, Chickasaws, Choctaws, Creeks (or Muskogees), Osages, Sacs and Foxes, Senecas and Sequoyahs.

The Cherokees, found originally in Alabama, the Carolinas, Georgia and Tennessee, established tribal government as early as 1808. In 1827 they adopted a constitution vesting legislative power in the General Council of the Cherokee Nation. The Cherokees who were divided into an eastern and western group, had been moving slowly westward since early in the 1800's, and finally settled in Oklahoma about 1837. An Act of Union, uniting the eastern and western divisions and establishing a new government, was signed at the Illinois Camp Ground in 1839. In the preamble of this Act will be found the following:

> "Whereas our fathers have existed as a separate and distinct nation in the possession and exercise of the essential

> and appropriate attributes of sovereignty from the period extending into antiquity, beyond the records and memory of man * * * therefore we, the people composing the eastern and western Cherokee Nation, in national convention assembled, by virtue of our original and inalienable rights do hereby solemnly and mutually agree to form ourselves into one body politic under the style entitled the Cherokee Nation."

One of those ratifying the "Act of the Union" for the Eastern Cherokees was the principal Chief and Speaker of the Council, "Going Snake." On behalf of the Western Cherokees, John Looney, Acting Principal Chief, signed with an x. Among the signers ratifying the new constitution at Tah-le-quah on September 6, 1839 were the following: George Washington Gunter, Young Glass, Looney Price, Tobacco Will, Young Wolf, Soft Shell Turtle, O'kan-sto-tak Logan, Tah-lah-see-nee and Oo-la-yo-a. Of the forty-eight signers twenty-one signed by making an x.

Their constitution provided (Article 3, Section 1) that the legislative power should be vested in two distinct branches—national committee and the council; and the style of their acts should be—Be it enacted by the National Council.

The first two Acts of the legislature of the National Council passed September 29, 1839 provided for the punishment of criminal offenses, punishment of thefts and other crimes. The third act passed the same day prevented an amalgamation with colored persons, while still another act legalized intermarriage with white men.

The "Five Civilized Tribes" have created an extremely interesting body of constitutional and statutory material which has more than historical interest. Our library is fortunate in that it possesses in some instances the only known copy. One of the important items missing, however, from the collection is:

> Constitution and laws of the Sac and Fox Nation Indian Territory. The constitution of the Sac and Fox Nation, prepared by the authorized committee, and adopted by the

National Council. St. Louis and New York. Press of the August Gask Bank Note & Litho. Co. 1888. (2) + 30 p.

What concerns us a little more directly is the lack of a complete file of the Laws of the Seneca Indians in New York. We covet the possession of the following items:

A single resolution of the "Council of the Seneca Chiefs residing on the Cattaraugus Reservation" dated Dec. 4, 1847, is published in "The Mental Elevator," vol. 1, p. 123–125.

Constitution of the Seneca Nation of Indians. Baltimore: Printed by William Wooddy & Son. 1848. 16 p.

Constitution of the "Government by chiefs," of the Seneca nation of Indians. Adopted Nov. 30, 1854, by the National Council, subject to the approval of the electors of the nation. Buffalo: Steam press of Thomas & Lathrops, Commercial advertiser building. 1854. 8 p.
Laws of the Seneca Nation, passed January 28, 1854. 24 p. date? (In Seneca and English.)

A collection such as ours is not merely of historical interest. Containing as it does most of the known published laws of the "Five Civilized Tribes" from 1800 on, as well as some from the Osages and Sequoyahs, it is a necessity for those interested in Indian affairs. The long list of treaties and decisions dealing with the valuable rights of Indians is proof that such a collection is of the utmost practical importance.

RECENT PUBLICATIONS

World Trade Law Journal. Volume 1, Number 1, January 1946, Quarterly. Published by Commerce Clearing House, Inc. $10 per year.

This new quarterly deals with foreign rules and regulations affecting American commerce and general business interests abroad. The first issue contains articles on laws relating to Australia, Austria, Belgium, Central America, Czechoslovakia, France, Germany, Luxemburg, Mexico, The Netherlands, Portugal, Switzerland, The United Kingdom and Yugoslavia.

FOOD, DRUG, COSMETIC LAW QUARTERLY. Volume 1, Number 1, March 1946. Published by Commerce Clearing House, Inc. $10 a year.

In this Quarterly are articles by specialists, public officials and other authorities on the legal problems involved in the preparation, packaging, labeling, storage and distribution of foods with respect to nutrition, health and the general public welfare, as well as notes on legislative, administrative and judicial developments in this important field of law.

APPROVED LAW LISTS

For the convenience of the membership, published below is the most recent list of publishers of law lists and legal directories who have received from the Special Committee on Law Lists of the American Bar Association a certificate of compliance with the Rules and Standards as to Law Lists.

Commercial Law Lists

A.C.A. List (October, 1945–1946 edition)
Associated Commercial Attorneys List
92 Liberty Street
New York City 6

American Lawyers Quarterly
The American Lawyers Company
1712 N. B. C. Building
Cleveland 14, Ohio

Attorneys List
U. S. Fidelity & Guaranty Company
Redwood & Calvert Streets
Baltimore 3, Maryland

B. A. Law List
The B. A. Law List Company
161 West Wisconsin Avenue
Milwaukee 3, Wisconsin

Clearing House Quarterly
Attorneys National Clearing House Co.
Fawkes Building
Minneapolis 3, Minnesota

The Columbia List
The Columbia Directory Company
320 Broadway
New York City 7

The Commercial Bar
The Commercial Bar, Inc.
521 Fifth Avenue
New York City 17

C-R-C Attorney Directory
The C-R-C Law List Company, Inc.
50 Church Street
New York City 7

Forwarders List of Attorneys
Forwarders List Company
38 South Dearborn Street
Chicago 3, Illinois

The General Bar
The General Bar, Inc.
36 West 44th Street
New York City 18

International Lawyers Law List
International Lawyers Company, Inc.
33 West 42nd Street
New York City 18

The Mercantile Adjuster
The Mercantile Adjuster Publishing Company
10 S. La Salle Street
Chicago 3, Illinois

The National List
The National List, Inc.
75 West Street
New York City 6

Rand McNally List of Bank Recommended Attorneys
Rand McNally & Company
536 South Clark Street
Chicago 5, Illinois

The United Law List
The United Law List Company, Inc.
280 Broadway
New York City 7

Wright-Holmes Law List
Wright-Holmes Corporation
225 West 34th Street
New York City 1

Zone Law List
Zone Law List Publishing Company, Inc.
403 Louderman Building
St. Louis 1, Missouri

Directory of Commercial Attorneys

American Lawyers Annual
The American Lawyers Annual Company
1715 N. B. C. Building
Cleveland 14, Ohio

General Law Lists

American Bank Attorneys
American Bank Attorneys
18 Brattle Street
Cambridge 38, Massachusetts

The American Bar
The James C. Fifield Company
1645 Hennepin Avenue
Minneapolis 3, Minnesota

The Bar Register
The Bar Register Company, Inc.
One Prospect Street
Summit 1, New Jersey

Campbell's List
Campbell-Broughton, Inc.
140 Nassau Street
New York City 7

Corporation Lawyers Directory
Central Guarantee Company, Inc.
141 West Jackson Boulevard
Chicago 4, Illinois

The Lawyers Directory
The Lawyers Directory, Inc.
18 East Fourth Street
Cincinnati 2, Ohio

The Lawyers List
Law List Publishing Company
111 Fifth Avenue
New York City 3

Russell Law List
Russell Law List
527 Fifth Avenue
New York City 7

Martindale-Hubbell Law Directory
Martindale-Hubbell, Inc.
1 Prospect Street
Summit, N. J.

(Space does not permit listing the approved Insurance Law, Probat Law, Foreign Law and State Directories.)

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